

# **EXHIBIT 3**



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VIA ELECTRONIC MAIL

June 1, 2022

William P. Ramey, III  
Kyril V. Talanov  
Ramey LLP  
5020 Montrose Blvd.  
Suite 800  
Houston, TX 77006

Re: *EscapeX IP LLC v. Apple Inc.*, USDC Western District of Texas (Case No. 6:22-cv-00427)

Dear Counsel,

We represent Apple Inc. (“Apple”) in the matter of *EscapeX IP LLC v. Apple Inc.*, Case No. 6:22-cv-00427, pending in the Western District of Texas. We are writing to request that EscapeX IP LLC (“EscapeX”) dismiss with prejudice all claims against Apple in the above-referenced matter because it has failed to present any colorable claim of infringement of any valid patent by Apple. Specifically, EscapeX’s infringement allegations are objectively baseless given that the accused Apple functionality *predates* the filing date of U.S. Patent No. 9,009,113 (the “‘113 patent”), as confirmed by publicly available Apple documents. Thus, EscapeX’s patent is invalid at least under 35 U.S.C. §102, and EscapeX lacks any good faith basis for maintaining this action against Apple. Indeed, if EscapeX persists in asserting any claim of the ‘113 patent against Apple, Apple will seek sanctions and all remedies available by law pursuant to at least Fed. R. Civ. P. 11 and 35 U.S.C. § 285.



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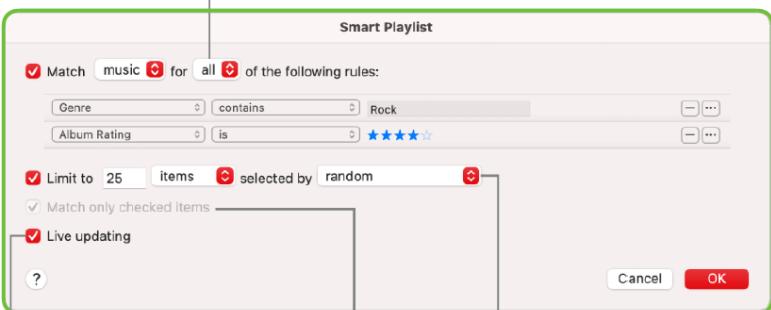
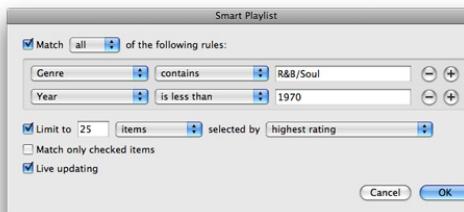
**EscapeX Asserts Functionality Pre-Dating the Patents' Priority Date**

The '113 patent is invalid under at least 35 U.S.C. § 102 in view of EscapeX's infringement read, which accuses Apple's Smart Playlist feature. The '113 patent claims priority to U.S. Patent No. 14/519,168, which was filed on October 21, 2014.

However, EscapeX is aware, or should have been aware, that the accused Smart Playlist feature predates the patent by more than *three years*. Indeed, the Smart Playlist menu for Apple Music cited in EscapeX's alleged infringement chart submitted with the complaint is identical to the prior art Smart Playlist menu. An exemplary claim chart comparing EscapeX's infringement read to prior art disclosures of the same Smart Playlist feature is provided below.



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EscapeX's Allegations	Accused Feature (Smart Playlist) circa 2010
<p>When there's more than one rule, choose if any or all conditions must be met.</p>  <p>Keep the playlist updated as items are added, removed, or changed.</p> <p>&lt;<a href="https://support.apple.com/en-ca/guide/music/mus1712973f4/mac">https://support.apple.com/en-ca/guide/music/mus1712973f4/mac</a>&gt;</p> <p>The reference describes receiving, by the user device, one or more album parameters that specify a change to be made to the dynamic album that includes a plurality of songs, wherein the dynamic album is stored via information encoding the plurality of songs at the user device in association with the artist specific application that plays the dynamic album at the user device [Smart Playlist].</p>	<p>Smart Playlist</p> <p>An easy way to keep track of your music by genre or artist is to create Smart Playlists. A Smart Playlist continuously searches your music library for new tracks meeting the criteria you set. iTunes gives you conditions to set as criteria for Smart Playlists, including Artist, Album, Year, Song Name, (Date) Last Played, Date Added, Genre, Composer, My Rating, Play Count, and more. For example, you may want to have all your R&amp;B/Soul music in one playlist. If you set up a Smart Playlist, it will gather every R&amp;B/Soul song in your library and continuously add to the playlist new R&amp;B/Soul songs imported into your library in the future.</p>  <p><a href="https://web.archive.org/web/20100702070355/http://www.apple.com/itunes/how-to#playlists-smartplaylists">https://web.archive.org/web/20100702070355/http://www.apple.com/itunes/how-to#playlists-smartplaylists</a> (July 2, 2010)</p> 



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	<p><a href="https://web.archive.org/web/20100730091147/http://www.apple.com/itunes/how-to#playlists-smartplaylists">https://web.archive.org/web/20100730091147/http://www.apple.com/itunes/how-to#playlists-smartplaylists</a> (July 30, 2010)</p>
<p>You can create a Smart Playlist that automatically organizes songs into <a href="#">playlists</a> based on criteria you specify. Whenever you add items to your <a href="#">music library</a> that meet the criteria of a Smart Playlist, the Smart Playlist is automatically updated to include them.</p> <p>For example, you could create a Smart Playlist that includes your most highly rated rock songs that were released before 1990 or after 2000. When you <a href="#">import</a> songs from a CD, they're automatically added to the Smart Playlist if they meet the criteria.</p> <p>Smart Playlists you create have this icon  next to them.</p> <p><a href="https://support.apple.com/en-ca/guide/music/mus1712973f4/mac">&lt;https://support.apple.com/en-ca/guide/music/mus1712973f4/mac&gt;</a></p> <p>The reference describes accessing, by the user device, the information encoding the plurality of songs responsive to receipt of the one or more album parameters [You can create a Smart Playlist that automatically organizes songs into playlists based on criteria you specify].</p>	<p><b>Smart Playlists <small>NEW</small></b></p> <p>Have iTunes create a playlist for you based on your desired criteria — like all the rock songs you've added to your library in the past month or songs you've listened to more than 10 times. You can create many rules for a single Smart Playlist, based on media type, genre, and more. iTunes finds the songs, podcasts, movies, or TV shows that match your rules and creates a playlist that updates itself automatically.</p> <p><a href="https://web.archive.org/web/20100414084655/http://www.apple.com/itunes/features">https://web.archive.org/web/20100414084655/http://www.apple.com/itunes/features</a> (April 14, 2010)</p> <p><b>Smart Playlist</b></p> <p>An easy way to keep track of your music by genre or artist is to create Smart Playlists. A Smart Playlist continuously searches your music library for new tracks meeting the criteria you set. iTunes gives you conditions to set as criteria for Smart Playlists, including Artist, Album, Year, Song Name, (Date) Last Played, Date Added, Genre, Composer, My Rating, Play Count, and more. For example, you may want to have all your R&amp;B/Soul music in one playlist. If you set up a Smart Playlist, it will gather every R&amp;B/Soul song in your library and continuously add to the playlist new R&amp;B/Soul songs imported into your library in the future.</p> <p></p> <p><a href="https://web.archive.org/web/20100702070355/http://www.apple.com/itunes/how-to#playlists-smartplaylists">https://web.archive.org/web/20100702070355/http://www.apple.com/itunes/how-to#playlists-smartplaylists</a> (July 2, 2010)</p>



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You can create a Smart Playlist that automatically organizes songs into [playlists](#) based on criteria you specify. Whenever you add items to your [music library](#) that meet the criteria of a Smart Playlist, the Smart Playlist is automatically updated to include them.

For example, you could create a Smart Playlist that includes your most highly rated rock songs that were released before 1990 or after 2000. When you [import](#) songs from a CD, they're automatically added to the Smart Playlist if they meet the criteria.

Smart Playlists you create have this icon  next to them.  
[<https://support.apple.com/en-ca/guide/music/mus1712973f4/mac>](https://support.apple.com/en-ca/guide/music/mus1712973f4/mac)

The reference describes modifying, by the user device, the information encoding the plurality of songs based on the one or more album parameters to change the dynamic album without intervention by a user of the user device [Whenever you add items to your music library that meet the criteria of a Smart Playlist, the Smart Playlist is automatically updated to include them].

The reference describes storing, by the user device, the modified information encoding the plurality of songs at the user device [Whenever you add items to your music library that meet the criteria of a Smart Playlist, the Smart Playlist is automatically updated to include them].

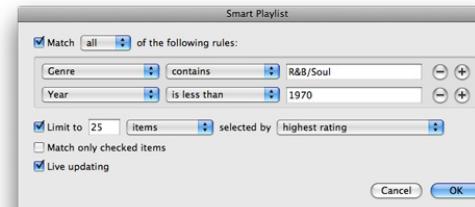
## Smart Playlists NEW

Have iTunes create a playlist for you based on your desired criteria — like all the rock songs you've added to your library in the past month or songs you've listened to more than 10 times. You can create many rules for a single Smart Playlist, based on media type, genre, and more. iTunes finds the songs, podcasts, movies, or TV shows that match your rules and creates a playlist that updates itself automatically.

<https://web.archive.org/web/20100414084655/http://www.apple.com/itunes/features> (April 14, 2010)

### Smart Playlist

An easy way to keep track of your music by genre or artist is to create Smart Playlists. A Smart Playlist continuously searches your music library for new tracks meeting the criteria you set. iTunes gives you conditions to set as criteria for Smart Playlists, including Artist, Album, Year, Song Name, (Date) Last Played, Date Added, Genre, Composer, My Rating, Play Count, and more. For example, you may want to have all your R&B/Soul music in one playlist. If you set up a Smart Playlist, it will gather every R&B/Soul song in your library and continuously add to the playlist new R&B/Soul songs imported into your library in the future.



<https://web.archive.org/web/20100702070355/http://www.apple.com/itunes/how-to#playlists-smartplaylists> (July 2, 2010)



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Stated simply, EscapeX has alleged that a 2010 feature is evidence that Apple Music contains all of the elements recited in the asserted '113 patent. Each of these disclosures demonstrate that accused Smart Playlist was publicly available and used at least as early as April 14, 2010. That is, the features cited on the Apple website as alleged evidence of infringement are found in earlier versions of the Apple website released prior to the 2014 priority date.

### **EscapeX Should Dismiss the Action with Prejudice**

EscapeX's infringement theory is not legally tenable because the Federal Circuit has stated in no uncertain terms, "it is axiomatic that that which would literally infringe if later anticipates if earlier." *Bristol-Myers Squibb v. Ben Venue Labs*, 246 F.3d 1368, 1378 (Fed. Cir. 2001) (citation omitted). And Rule 11 states that an attorney who presents a pleading or other paper to the Court certifies by his signature that he has made "inquiry reasonable under the circumstances" and has concluded that his submission: (1) "is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation," (2) "the claims . . . are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law;" and (3) "the factual contentions have evidentiary support or, . . . will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b)(1)-(3); see also e.g., *Raylon v. Complus Data Innovations, Inc.*, 700 F.3d 1361, 1367-68 (Fed. Cir. 2012). Furthermore, a district court can award attorney fees under Section 285 when a litigation is both: (1) brought in subjective bad faith, and (2) objectively baseless. *MarcTec LLC v. Johnson & Johnson*, 664 F.3d 907 (Fed. Cir. 2012). For at least the reasons explained above, the strictures of both Rule 11 and Section 285 preclude EscapeX from asserting the '113 patent against Apple.

Any effort to maintain this case will necessarily require EscapeX to advance allegations contrary to those made in the Complaint. Apple provides this information now so that the parties and the Court may avoid unnecessary expenditure of time and money by disposing of an action that has no colorable basis in law or fact. If Apple is required to expend additional legal fees and costs to defend against objectively baseless allegations of infringement by EscapeX, Apple will seek to recover those fees and costs, and will further seek all other remedies available to it.



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Finally, this letter requests that EscapeX preserve all documents, communications, and information maintained in any medium related to the subject matter of the Complaint, including any pre-suit investigation of the alleged infringement, asserted patent, file history, and Apple's products.

While Apple hopes to resolve this matter in an amicable and professional manner, we assure you that we do not take this request lightly, and hope that EscapeX will promptly dismiss the case with prejudice. To that end, Apple requests a formal response to this letter within seven (7) business days.

Very truly yours,

A handwritten signature in black ink, appearing to read "Benjamin C. Elacqua".

Benjamin C. Elacqua

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